

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5276 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? yes
2. To be referred to the Reporter or not? yes :
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? no
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? no
5. Whether it is to be circulated to the Civil Judge? no :

SHON CERAMICS PVT. LTD

Versus

UNION OF INDIA

Appearance:

NANAVATI ASSOCIATES for Petitioners
Mr.Mukesh R. Shah for Respondent No. 1
MS AVANI S MEHTA for Respondent No. 2, 3

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 18/11/1999

ORAL JUDGEMENT

1. A resume of skeleton projection of fact may be
stated at the out-set so as to appreciate and examine the
merit of the petition and challenge against it.

2. In reality this petition under Article 226 of the Constitution of India is against show cause notice issued by respondent No.3 on the ground that the petitioner company has, wrongly, availed benefit of Central Excise exemption on the product manufactured by them classifying them as Mosaic tiles. Similar show cause notices also came to be issued on the petitioner company denying the benefit of exemption notification on the above product inspite of well settled legal position.

3. According to the case of the petitioner the product 'mosaic-tiles' manufactured by the company are classifiable only as mosaic tiles and it is eligible for exemption claimed by them under the notification. On 10.6.1980 the order in original came to be passed by the Collector of Central Excise, Baroda holding that the products manufactured by the company are not 'mosaic-tiles' and are in fact items of China and porcelainware under tariff item 23-B(4).

4. Being dissatisfied by the order of the Collector of Central Excise, Baroda, the petitioner preferred Appeal before the SEGAT and succeeded in Appeal. Thereafter the Department against the order of SEGAT filed Appeal which was dismissed by the Honourable Supreme Court.

5. In short it is a case of the petitioner that the product was in fact, finally, concluded to be mosaic tiles and inspite of this the Assistant Collector, Central Excise, Baroda vide his order dated 9.12.1996 reopened the issue and denied proper classification under 6807.00 of CETA to the company.

6. On 20.3.1987 again the Collector (Appeal), Bombay was pleased to set aside this order of the Assistant Collector, Baroda and held that the petitioner company was properly classified. The department Appeal was again rejected by the CEGAT against the order of the Collector. It is, therefore, contended by the petitioner that the product mosaic tiles has been held to be correct classification entitling the company to the exemption notification. The Central Excise Authority again issued show cause notice as Annexure : "C" to the petition raising the same issue for fresh adjudication. The show cause notice as at Annexure : C dated 9.4.1997 articulated detailed reason why the Central Excise duty amounting to Rs.17,46,259.25 should not be recovered from the petitioner under Sec.11A of the Central Excise Act, 1944 and why not to levy penalty under Rule 173 Q of the Rules 1944 for contravention of Rules 173 B, 173 F, 173 G

52A and Rule 9 of the Central Excise Rules, 1944. It is clearly stipulated in the show cause notice that whether the petitioner desires to be heard in person before the case is adjudicated upon or not. The written explanation is also invited. It appears that assessee-petitioner before us came to this Court by invoking the aids of provision of Articles 226 and 227 of the Constitution of India. So it is at a stage of show cause notice.

7. The grounds stated in the show cause notice by the Authority is that the assessee has, wrongly, availed the benefit of the exemption from excise duty under Notification No.51 of 1995 (now notification No.8/96 to 23.07.96) during the period from July, 1996 to September, 1996 and cleared their product unglazed ceramic mosaic patterns/designs at nil rate of duty, resulting in non-payment of Central Excise duty to the tune of Rs.9,21,924.81 ps. Therefore the department thought it fit to invoke the powers under Sec.11(A) of the Central Excise Act.

8. It is true that earlier in two rounds of litigation the department had lost. The matter had been fought till last. However, the petitioner was directed to produce all the documents upon which they intended to rely in support of their defence with the written explanation. It appears that it had not been fully complied with.

9. In view of the factual scenerio and at the show cause notice we are not inclined to exercise our extra-ordinary plenary discretinary jurisdictional and writ power under Articles 226 & 227 of the Constitution of India. However, while dismissing this petition, being at the show cause notice stage, it is observed that in case if the petitioner fails before the Authority in the departmental channel and any order adverse to the interest of the petitioner is recorded the same will be suspended or stayed for a period of six weeks so as to enable the petitioner to approach this Court this is done without further entering into the merit of the controversy. It will be open for the petitioner to move this Court for revival of the petition. Obviously, the authority, while determining and adjudicating upon the merit of the show cause notice after hearing the petitioner and considering the latest proposition of law propounded in the case of the petitioner dated 7.11.1990 passed by the CEGAT and 19.3.1996 also passed by the CEGAT, in accordance with law, as early as possible.

10. In view of the aforesaid observations and

directions this petition stand disposed of at this stage.

sd/-

Date : November 18, 1999 (J. N. Bhatt, J.)

sd/-

(D. C. Srivastava, J.)

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